IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12334 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MANISH @ BALI DAMJIBHAI KUMBHAR

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 12334 of 2002

MR HR PRAJAPATI for Petitioner No. 1

MR MR PRAJAPATI for Petitioner No. 1

MS NANDINI JOSHI, AGP for Respondent No. 1-3

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 16/05/2003

ORAL JUDGEMENT

By filing this petition, the petitioner detenu has challenged the detention order dated 20th October,

2002. By the said order, the petitioner is detained as a Bootlegger under Prevention of Anti Social Activities Act, 1985. The order of detention is challenged by the petitioner by way of this petition.

2. The activity of the petitioner is highlighted in the detention order. There is reference of about 2 criminal cases which are pending against the petitioner under the Bombay Prohibition Act.

3. On behalf of the petitioner, it is argued that the last registered offence against the petitioner is of 23rd August, 2002 and the order of detention was passed after about a period of two months, that is, on 20th October, 2002. It is submitted that there is a delay in passing the detention order and as such the detention order is required to be quashed and set aside.

4. In the affidavit in reply the detaining authority has tried to explain the said delay by pointing out that the petitioner was released on bail and thereafter he has again continued the said activities. In order to substantiate the aforesaid aspect, reference is made to some statements given by the witnesses. However, even if the petitioner was in judicial custody, it was open for the authority to detain him. If his activities are of such a nature then he is required to be detained immediately. The detaining authority, after giving appropriate reasons, could have even passed the detention order against the petitioner even if he is in custody pointing out that it is necessary to detain him. There is a delay of about one and half month in passing the detention order. If the petitioner was required to be detained forthwith to prevent his anti-social activities it was not necessary to wait for such a long time even if the petitioner was released on bail. In view of the aforesaid fact, on the ground of delay in passing the order of detention, the order of detention is required to be quashed and set aside.

5. The learned advocate has relied upon judgement of this Court having similar facts by which this Court has set aside the detention order on the ground of delay of couple of months in passing the detention order.

6. On the aforesaid view of the matter, the petition succeeds and the same is allowed. The order of detention under challenge is quashed and set aside. The petitioner detenu is ordered to be set at liberty forthwith if he is not required in any other case. Rule is made absolute accordingly. Direct service is permitted.

(P.B.Majmudar,J)

Jayanti*